Supreme Court, U.S.
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No. 99-1395

In The

Supreme Court of the United States

DANIEL C. MOTLEY,

Petitioner,

v.

NEW JERSEY STATE POLICE, THE STATE TROOPERS FRATERNAL ASSOCIATION OF NEW JERSEY,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

Brief of the Respondent New Jersey State Police in Opposition

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QUESTION PRESENTED

Whether the Court of Appeals for the Third Circuit properly held, in light of Cleveland v. Policy Management Sys. Corp., 526 U.S. 795, 119 S.Ct. 1597 (1999), that defendant was entitled to summary judgment because plaintiff failed to proffer a sufficient explanation as to how his statements of disability were consistent with his subsequent American with Disabilities Act claim that he was able to perform the essential duties of his job with or without a reasonable accommodation.

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OPINIONS AND ORDERS BELOW

In addition to the opinions and orders referred to in the petition, the Court of Appeals for the Third Circuit also entered an order denying the suggestion of amicus curiae, Equal Employment Opportunity Commission, for a rehearing en banc. The order is printed at the end of this brief. (App. to Opp. at A-1).

STATEMENT OF THE CASE

Daniel C. Motley, formerly a New Jersey State Police Trooper, was injured in the line of duty. Because of those injuries, Motley was placed on Light Duty Status and he did not thereafter participate in the annual physical examination required of State Troopers. Motley subsequently applied for and was awarded an accidental disability retirement pension which is granted when a member of the State Police is permanently and totally disabled and thereby rendered physically incapacitated for the performance of his or her usual duties as a member of the State Police. In his application, Motley asserted he was permanently and totally disabled and supported his assertion with factual statements regarding his physical disabilities and limitations. A Medical Board found that Motley was incapacitated for State Police Officer duties, and the Board of Trustees awarded Motley the retirement pension. Motley v. New Jersey State Police, 196 F.3d 160, 162-63 (3d Cir. 1999). (App. to Pet. A-28 to A-67). (App. to Opp. A-3 to A-5).

Despite his assertions and the findings rendered as a result of his application, Motley filed suit in the United States District Court for the District of New Jersey claiming that he was denied promotions and constructively discharged in violation of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq.

and the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. § 10:5-1 et seq.[1] Motley claimed that he was entitled to be promoted simply because he allegedly performed all the duties of a trooper for a sufficient period of time. (Pet. at 2). In fact, promotion was not simply dependent upon "putting in time." Promotion, in part, also depended upon meeting physical requirements or receiving the approval of the Superintendent. (App. to Pet. at A-54).

Defendant, New Jersey State Police, moved for summary judgment on the ground that Motley was judicially estopped from pursuing his ADA and NJLAD claims because his factual statements regarding his physical disabilities and limitations were inconsistent with his subsequent claim that he could perform the essential functions of his job with or without a reasonable accommodation. The District Court, applying the doctrine of judicial estoppel, entered summary judgment in favor of the State Police, finding that Motley's factual assertions in his application for an accidental disability pension were fundamentally inconsistent with his ADA claim that he was a "qualified person with a disability who, with or without reasonable accommodation, can perform the essential functions of the job" and a similar claim under the NJLAD. (App. to Pet. at A-36).

Motley argued on appeal to the United States Court of Appeals for the Third Circuit that the District court erred in applying judicial estoppel to his ADA and NJLAD claims. Specifically, Motley contended that the inconsistencies in his positions could be reconciled by the

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[1]Neither party contests that the ADA and NJLAD are substantially similar and that a decision dispositive of Motley's ADA claim would also be dispositive of his NJLAD claim. See Motley, supra, 196 F.3d at 166 n.5.

differences in the statutory context in which they were provided. That is, his disability statements were made without consideration of whether he could perform the essential functions of his job with or without a reasonable accommodation. The Equal Employment Opportunity Commission, appearing as amicus curiae, joined Motley's assertions on appeal. Motley, supra, 196 F.3d at 162.

While the appeal was pending before the Third Circuit, the Supreme Court issued Cleveland v. Policy Management Sys. Corp., 526 U.S. 795, 119 S.Ct. 1597 (1999). The Court specifically did not address and left the law where it stood with regard to cases in which a plaintiff's disability application presents a purely factual conflict with the plaintiff's claim that he or she is able to work with a reasonable accommodation. However, the Court did hold that when a plaintiff's representation of total disability implies a context-related legal conclusion, the statutory context of a disability application is relevant to whether the application and any supporting statements are consistent with an ADA claim. More specifically, it held that, "pursuit, and receipt, of [disability] benefits does not automatically estop the recipient from pursuing an ADA claim." Nonetheless, for the ADA claim to survive a summary judgment motion, the plaintiff must explain why and how the disability application and statements are consistent with the ADA claim. Cleveland, supra, 526 U.S. at ___, 119 S.Ct. at 1604.

In light of Cleveland, the Third Circuit affirmed summary judgment in favor of defendant State Police. The court affirmed, "not because he was estopped, but because Motley was simply not entitled to survive summary judgment in light of his prior assertions of total disability, and his failure to adequately reconcile his wholly inconsistent positions." Motley, supra, 196 F.3d at 162. Unlike the plaintiff in Cleveland, Motley's

statements were not simply "a general allegation of disability" implying a context-related legal conclusion. Id. at 166. Rather, he detailed factual "descriptions of his injuries and their impact on his ability to work." Id. His descriptions were evidence that he could not perform the fundamental job requirements for state police officers. Id.

"More important than the extent of Motley's injuries," however, was "his failure to proffer a reasonable explanation for his inconsistent statements." Id. Unlike the plaintiff in Cleveland, Motley failed to proffer a sufficient explanation for the inconsistencies in his statements. Id. at 165, 166. He did not proffer any explanation other than note the differences in the statutory contexts of the disability statute and the ADA. The Third Circuit stated that Cleveland clearly required more. Id. at 167. Cleveland required that Motley explain how his disability statements were consistent with his claim that he could in fact perform the essential functions of his job with a reasonable accommodation. Cleveland, supra, 526 U.S. at ___, 119 S.Ct. at 1604. The "explanation must be sufficient to warrant a reasonable juror's conclusion that, assuming the truth of, or the plaintiff's good faith belief in, the earlier statement, the plaintiff could nonetheless 'perform the essential functions' of [his] job, with or without 'reasonable accommodation.'" Id.

The Third Circuit determined that Motley had failed to satisfy this requirement. Accordingly, it affirmed the District Court's finding that Motley had not proffered sufficient evidence to permit a reasonable juror to conclude that his positions could be reconciled. Motley, supra, 196 F.3d at 166.

The Third Circuit subsequently denied a suggestion by amicus curiae, Equal Employment Opportunity

Commission, for a rehearing en banc. (App. to Opp. at A-1 to A-2).

REASONS FOR DENYING THE WRIT

Petitioner's Dispute with the Third Circuit's Interpretation of Cleveland v. Policy Management Sys. Corp., 526 U.S. 795, 119 S.Ct. 1597 (1999) Presents No Question That Warrants Granting the Writ.

Motley contends that the Court should grant his petition because the Third Circuit's decision allegedly conflicts with Cleveland. (Pet. 9 to 10). Motley's contention fails and his petition should be denied because the alleged conflict is illusory. The Third Circuit correctly interpreted and applied Cleveland. Furthermore, the interpretation does not conflict with the holding of any other court or present a significant or recurring issue ripe for Supreme Court review.

Motley argues that the Third Circuit erred because it determined whether his explanations for his apparently inconsistent positions were sufficient for his ADA claim to survive summary judgment. He contends that, contrary to the Third Circuit's interpretation of Cleveland, the Court in Cleveland did not resolve whether Ms. Cleveland had provided sufficient explanations for her apparently inconsistent positions but rather remanded the issue to a sworn forum. Thus, according to Motley, Cleveland directs that the Third Circuit should not have resolved this issue as to himself but rather should have remanded it to a sworn forum. (Pet. 13 to 15).

Motley's interpretation of Cleveland is simply incorrect. The Third Circuit correctly concluded that the Court in Cleveland had found that Ms. Cleveland's

explanations were sufficient on their face for her ADA claim to survive summary judgment. Indeed, the Court stated that Ms. Cleveland "explains the discrepancy between her SSDI statements that she was 'totally disabled' and her ADA claim that she could 'perform that essential functions' of her job." Cleveland, supra, 526 U.S. at ___, 119 S.Ct. at 1604. Her explanations, however, were not proffered as evidence or contested in a sworn forum but rather were raised on appeal. Id. Consequently, the Court remanded the matter to permit Ms. Cleveland to present her explanations and defendant to contest them in a sworn forum. "The parties should have an opportunity to present, or to contest, these explanations, in a sworn forum." Id. (emphasis added). There is no indication, as Motley suggests, that the Court remanded the matter to provide Ms. Cleveland with another chance to present a new or different explanation. Therefore, Motley's interpretation of Cleveland is incorrect and does not support granting his petition.

For similar reasons, Motley's argument that Cleveland requires remanding all similar appeals that were pending when the Court issued its decision is simply wrong.[2] (Pet. 12 to 13). As discussed, there is no indication that the Court remanded Cleveland to give Ms. Cleveland another shot at explaining her apparently inconsistent positions. Rather, the Court remanded the matter to give her an opportunity to present, in a sworn forum, the explanations she had already proffered on appeal. Cleveland, supra, 526 U.S. at ___, 119 S.Ct. at 1604. Furthermore, the Court in Cleveland did not

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[2]Motley later states that perhaps this Court's "requirement," or "directive" does not apply to every ADA case that was pending when Cleveland was decided. (Pet. at 18). His alternative argument, that the "directive" is applicable to this matter even if it is not universally applicable, is rebutted below.

indicate that its newly enunciated legal analysis could not be applied to the record on appeal before it or that appellate courts could not immediately apply the legal analysis to the records before them. Indeed, in affirming a correct decision, appellate courts may properly apply a different legal analysis on appeal than applied in the court below. Helvering v. Gowran, 302 U.S. 238, 245, (1937).

Motley cites the Court's remand of Moore v. Payless Shoe Source, Inc., ___ U.S. ___, 119 S.Ct. 2017 (1999)(mem.) in support of his proposition that Cleveland requires that this matter be automatically remanded. However, Motley's reliance is misplaced because Moore is easily distinguishable. Simply stated, in Moore, the Eighth Circuit employed a legal analysis that was not consistent with that enunciated in Cleveland. Moore, 139 F.3d 1210, 1213 (8th Cir. 1998), vacated, ___ U.S. ___, 119 S.Ct. 2017 (1999)(mem.). Indeed, Moore was decided before the Eighth Circuit had the benefit of Cleveland. Consequently, the Court vacated the Eighth Circuit's judgment and remanded the matter for proceedings consistent with Cleveland. Moore, supra, ___ U.S. at ___, 119 S.Ct. at 2017.[3] The Third Circuit, however, specifically applied the Cleveland legal analysis in rendering its decision. Therefore, because this matter is distinguishable from Moore in this critical respect, the Court's treatment of Moore does not support Motley's proposition that Cleveland requires that this matter be automatically remanded.

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[3]Contrary to Motley's assertion, there is no indication that this Court remanded Moore so that Ms. Moore could have a new record made. (Pet. at 16). The Court simply remanded the matter, not to a "sworn forum" where a new record would be made, but to the Eighth Circuit for further consideration.

Similarly, Motley's reliance upon Klein v. Stahl GMBH & Co. Machinefabrik, 185 F.3d 98 (3d Cir. 1999) is also misplaced. (Pet. at 13 to 14). As Motley acknowledges, Klein did not involve an ADA claim. Therefore, Cleveland was not controlling law and Klein itself is inapposite.

Motley's petition should also be denied because this matter is factually distinguishable from Cleveland obviating any reason to remand it as the Court remanded Cleveland. Unlike Ms. Cleveland, Motley has never proffered a sufficient explanation for his change in positions. His only explanation was that the disability statute and the ADA had different statutory contexts. Motley, supra, 196 F.3d at 166. Cleveland notes that statutory contexts may differ but nevertheless requires a more sufficient explanation. Cleveland, supra, 526 U.S. at ___, 119 S.Ct. at 1603. Cleveland requires that Motley explain how his disability statements were consistent with his claim that he could in fact perform the essential functions of his job with a reasonable accommodation. Id. at ___, 119 S.Ct. at 1604.

Motley never requested a medical or physical accommodation with regard to the performance of his duties. Rather, he sought to be exempted from the annual fitness test. (Pet. at 6). Thus, his requested accommodation does not impact whether he could perform the essential functions of his job. Accordingly, it does not affect the Medical Board's uncontested conclusion "that Motley was permanently incapacitated for police officer duties." Motley, supra, 196 F.3d at 167. (App. to Opp. at A-3). (Pet. at 19). Also, even if Motley were granted his accommodation, the differing statutory contexts are not sufficient for a reasonable juror to conclude that Motley, who suffers from "extremely painful and recurring headaches . . . . intense back pain whenever [he] sits for prolonged periods (i.e. 20 minutes

or more) . . . . difficulty sleeping at night . . . pain in [his] lower back . . . . spasms in [his] back . . . . [and] extreme pain in [his] left knee" could perform the essential duties of a State Trooper. (App. to Pet. at A-61). See Motley, supra, 196 F.3d at 166-67. A reasonable juror could not conclude that the differing statutory contexts explained how Motley, who also has "extreme difficulty running," could, at any time and without warning, respond with appropriate strength and force to violent confrontation.[4] (App. to Pet. at A-43, A-61). See Motley, supra, 196 F.3d at 165, 167. See also id. at 162 n.1 (noting State Police's justification for fitness examination, that officers be physically able to respond to violent confrontation to protect the public).

Despite these inconsistencies, Motley contends that the record is neither devoid of explanation nor the possibility of explanation sufficient for his claim to survive summary judgment. (Pet. at 18). Yet he still fails to point to or offer a sufficient explanation. First, he asserts that his statement of disability was a context based legal conclusion, (Pet. at 18), when in fact he made several factually specific statements describing the severity of his injuries. See Motley, supra, 196 F.3d at

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[4]Motley's contention that he was in fact performing the essential duties of his job is immaterial. (Pet. at 19). Whether or not his contention can be proven, Motley "cannot simply ignore the apparent contradiction that arises out of [his] earlier" disability claims. Cleveland, supra, 526 U.S. at ___, 119 S.Ct. at 1603. This Court specifically requires "an explanation of any apparent inconsistency . . . ." Id. at ___, 119 S.Ct. at 1604. Moreover, contrary to Motley's suggestion, the State Police has no reverse obligation to show that he could not perform the essential functions of his job. (Pet. at 18). Motley is the person who filed the disability application and then brought the ADA claim. Therefore, he bears the burden of production.

166-67. Motley then claims that the Third Circuit placed too much weight upon his descriptions of his injuries and the subsequent conclusion that those injuries made him unable to perform the essential duties of his job with or without an accommodation. (Pet. at 18). However, irrespective of how much weight was placed upon his descriptions of his injuries, Motley ultimately still failed to provide a sufficient explanation for the inconsistencies the descriptions raise.

Furthermore, as discussed, Motley's requested accommodation, exemption from the annual physical fitness test, is immaterial to explaining how he could perform the essential duties of his job given his stated physical limitations. Additionally, Motley need not himself state or conclude that his injuries rendered him unable to perform his job with or without accommodation for a court to soundly reach this conclusion.[5] In short, Motley still fails to show that the record contains even the possibility that the inconsistencies can be sufficiently explained for his claim to survive summary judgment. Indeed, Motley admits that he has failed to provide a sufficient explanation when he states that the Third Circuit's "failure to remand robbed [him] of his opportunity to offer a sufficient explanation for any alleged inconsistencies . . . ." (Pet. at 17).

Therefore, while the Court remanded Cleveland to permit Ms. Cleveland to present her proffered explanations in a sworn forum, the Third Circuit had no

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[5]Indeed, given that the context of the disability statute does not account for reasonable accommodations, Motley would never state that the injuries made him unable to perform his job even with a reasonable accommodation. All he could state was that he was unable to work, which is exactly what he did state with detailed explanation.

reason to remand this matter because Motley had not proffered sufficient explanations to present in a sworn forum. Thus, the Third Circuit correctly applied the legal analysis enunciated in Cleveland to the record before it and determined that Motley's ADA claim could not survive summary judgment.

Motley, however, contends the Third Circuit denied him an opportunity to provide a sufficient explanation under the "new rules" of Cleveland. (Pet. at 16 to 17). This contention is also incorrect. Motley was given an opportunity at the District Court and at the Third Circuit to proffer an explanation sufficient to defeat summary judgment. At the District Court, Motley was required to show that he was not judicially estopped from asserting his ADA claim. The judicial estoppel analysis required that he present evidence or otherwise explain that his positions were not inconsistent. (App. to Pet. at A-35). See Motley, supra, 196 F.3d at 164, 165-66.[6] Cleveland also required that Motley present evidence or otherwise explain that his positions were not inconsistent. "When faced with a plaintiff's previous sworn statement asserting 'total disability' or the like, the court should require an explanation of any apparent inconsistency with the necessary elements of an ADA claim." Cleveland, supra, 526 U.S. at ___, 119 S.Ct. at 1604.[7] Cleveland

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[6]Motley identified this issue and addressed it in his brief in opposition to defendant's motion for summary judgment. (United States District Court for the District of New Jersey, Newark Vicinage, "Letter Brief on Behalf of Plaintiff," dated August 25, 1997, pp. 8-10).

[7]As previously discussed, Motley's explanation was not sufficient for a reasonable juror to conclude that, assuming the truth of, or Motley's good faith belief in, his disability statements, he could nonetheless perform the essential functions of a State

simply enunciated a different legal analysis for the proffered evidence or explanation. Therefore, the Third Circuit did not deny Motley an opportunity to explain the apparent inconsistency of his positions.

Motley also fails to cite any conflict with the Third Circuit's decision. In fact, the cases he cites, and other cases, support the Third Circuit's decision. (Pet. at 15 n.4, 17 n.5). In Feldman v. American Mem'l Life Ins. Co., 196 F.3d 783 (7th Cir. 1999), the Court of Appeals for the Seventh Circuit did not remand an appeal which was pending when this Court issued Cleveland even though the District Court clearly did not employ the Cleveland legal analysis. Instead, based upon the record before it, the Seventh Circuit affirmed summary judgment in favor of defendant because Ms. "Feldman failed to offer an explanation for the contradiction between her [disability] and ADA statements." Feldman, supra, 196 F.3d at 792. Neither did the Court of Appeals for the Second Circuit remand Parker v. Columbia Pictures Indus., ___ F.3d ___, 2000 WL 223790 (2d Cir. 2000) even though the District Court obviously did not employ the Cleveland legal analysis and the appeal was pending when this Court issued Cleveland. Instead, based upon the record before it, the Second Circuit reversed summary judgment in favor of defendant because Mr. Parker had presented a sufficient explanation for the contradiction between his disability benefits application and his ADA claim. Parker, supra, ___ F.3d at ___, 2000 WL 223790, *5-6. See also Mitchell v. Washingtonville Central School, 190 F.3d 1, 8 (2d Cir. 1999) (not remanding to District Court, but affirming summary judgment, in light of Cleveland, on ground that plaintiff was judicially estopped from contesting disability statements that demonstrated he was

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Trooper.

unable to perform his job with accommodation). See also Ejellestad v. Pizza Hut of Am., Inc., 188 F.3d 944, 956 n.9 (8th Cir. 1999) (noting that the Court in Cleveland found that Ms. Cleveland had proffered a sufficient explanation for her claim to survive summary judgment). The lack of any cited split in authority is further support that the alleged conflict between the Third Circuit's decision in this matter and Cleveland is illusory and that Motley's petition for a writ of certiorari should be denied.

Finally, Motley admits that the issue he raises in his petition is limited to whether and when cases that were pending on appeal when Cleveland was decided must be remanded in light of Cleveland. (Pet. at 12). Thus, the issue is extremely narrow and not likely to recur. As such, there is no compelling reason for review, and the petition for certiorari should be denied.

CONCLUSION

For these reasons, the petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit should be denied.

Respectfully submitted,

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